IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10485 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HUSSEN A S DADI - Petitioner(s)

Versus

MAMLATDAR & 1 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MR HM BHAGAT for Respondent(s) : 1,
MS ARCHANA RAVAL AGP for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/11/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Mamlatdar, Lunavada dtd.3/8/1994 under the provisions of the Saurashtra Felling of of Trees (Infliction of Punishment) Act, 1951 (hereinafter referred to as “the Act” for convenience), by which the said authority passed an order of confiscating the wood worth Rs.13,000=00 (Rupees Thirteen Thousand only).

2. It appears from the record that there were parcel of land bearing Survey No.312,313/1 and 313/2 belonging to Anjuman Burhani Jamat Committee, Lunawada and 26 trees were cut by the petitioner therefrom. It is the contention of

the petitioner that the said trees were cut after obtaining the necessary permission from the Talati-cum-Mantri, Gram Panchayat, Lunawada, as the Mamlatdar, Lunawada was of the opinion that the Talati-cum-Mantri, Gram Panchayat, Lunawada was not having competence to grant such permission, he initiated the proceedings under the Act and considering the fat that the Talati-cum-Mantri has no jurisdiction to issue such permission, when the property / trees in question are within the jurisdiction of Taluka and/or Nagar Panchayat and therefore, holding that the Talati-cum-Mantri had no jurisdiction to issue such permission, passed the impugned order confiscating the wood worth respondents.13,000=00. Being aggrieved by the said order, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. Ms.Archana Raval, learned AGP has raised

a preliminary objection with regard to the maintainability of this petition, as the petitioner has statutory alternative remedy available. However, n view of the fact that the present petition is of 1994, this Court has entertained the present petition, it will not be proper at this stage after a period of 10 years to relegate the petitioner to avail the alternative remedy. Therefore, this Court has decided the matter on merits.

4. Mr.Mehul S. Shah, learned advocate appearing on behalf of the petitioner has submitted that the Mamlatdar has materially erred in holding that the Talati-cum-Mantri was not having authority, jurisdiction and/or competence to grant the permission. He has relied upon the notification issued under the Act wherein the Talati-cum-Mantri had jurisdiction to grant the permission with regard to trees or of their respective jurisdiction. It is also furhter

submitted that even the Range Officer has also admitted that the Talati-cum-Mantri had granted the permission. It is also further submitted by him that though the trees were within the jurisdiction of the Gram Panchayat and the Lunawada was a Gram Panchayat, treating it as Nagar Panchayat, the authority has passed the impugned order and committed an error which is required to be quashed and set aside.

5. Ms.Archana Raval, learned AGP appearing for the State is not in a position to satisfy this Court whether the Lunawada was at the relevant time Nagar Panchayat or not. However, relying upon the affidavit in reply, she has submitted that as per the Circular dtd.30/7/1993, the petitioner was required to submit an application in the prescribed format, but the said requirement was not complied with and therefore, it is requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the parties. It is required to be noted that on going through the impugned order, it is apparent that the only reason which is given by the Mamlatdar, Lunawada for passing the impugned order is that the Talati-cum-Mantri was not having authority or jurisdiction to grant the permission, as in the case of Nagar Panchayat, only Taluka Officer has jurisdiction. The authority itself in the impugned order has recorded that the Talati-cum-Mantri was of Gram Panchayat, Lunawada and therefore, it appears that the authority has committed an error in treating the Lunawada within the limits of Nagar Panchayat instead of Gram Panchayat, while passing the impugned order. So far as the contention raised by Ms.Archana Raval, learned AGP on behalf of the State that as per Circular of 1992, an application was required to be submitted in a prescribed format and in the

present case the said requirement was not complied with is concerned, it is required to be noted that the impugned order is passed on ground that the Talati-cum-Mantri was not having authority to grant the permission as in the case of Nagar Panchayat, the only Taluka Officer has jurisdiction and therefore, the said contention cannot be considered at this stage.

7. For the reasons stated hereinabove, and it appears that at the relevant time the Lunawada was a Gram Panchayat and the Talati-cum-Mantri who has granted the permission was Gram Panchayat, Lunawada, it cannot be said that he was not having jurisdiction, competence and/or authority to grant such permission.

8. For the reason stated as aforesaid, the petition succeeds. The impugned order passed by the Mamlatdar, Lunawada dtd.3/8/1994 is required to be quashed and set aside and is accordingly

quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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